

**REMARKS**

The Office has required restriction of the above-identified application as follows:

- I. Claims 1-9 and 15-20, drawn to compounds of formulae (1)-(6), processes of making and their methods of use. If this group is elected, applicants are requested to elect a single species for the search purpose.
- II. Claims 10-14, draw to processes of making. If this group is elected, applicants are requested to elect a single species for the search purpose. This group is subject further restriction if it is elected.

Applicants have elected, with traverse, Group I; claims 1-9 and 15-20, drawn to compounds of formula (1)-(6). In addition, applicants elect, with traverse for search purposes only, the Ligand Species Ligand 2 of Example 2 on page 17 of the specification. Claims 1-9 and 15 read on the elected species.

Applicants traverse the Restriction Requirement on the ground that the Office has not applied the same standard of unity of invention as the International Preliminary Examination Authority. The Authority did not take the position that unity of invention was lacking in the international application and examined all claims together. Applicants note that PCT Article 27 (1) states that no national law shall require compliance with requirement relating to the form and contents of the international application different from or additional to those which are provided for the Patent Cooperation Treaty and the Regulations. In light of the PCT Article and 37 C.F.R. § 145 and § 1.499, it is apparent that when the International Preliminary Examination Authority finds no objections based on lack of unity of invention, there is a special burden on the Office to explain why its conclusions are diametrically opposed to those of the International Preliminary Authority, as approved by treaty.

In addition, the Office has concluded that unity of invention is lacking because the claims lack a significant structural element qualifying as a technical feature that defines over the prior. The Office cites Lovv et al. CAS: 84: 89741; however, the Office provides no rationale as to

how this conclusion was reached. Accordingly, the Office has failed to meet its burden and the restriction should be withdrawn.

The Election requirement is respectfully traversed. The Applicants note that the PCT administrative instructions in the MPEP, Annex B, Part 1 (f) define Markush practice and state that the alternatives (chemical or non-chemical) defined in a single claim shall meet the technical relationship requirements of PCT Rule 13.2 if they are of a similar nature. The species meet the criteria listed above, therefore, the Office has failed to meet its burden and withdrawal of the Election of Species Requirement is respectfully requested.

Finally, with respect to the elected species, Applicants respectfully submit that, should the elected species be found allowable, the Office should expand its search to the non-elected species.

For the reasons presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain the Restriction and Election of Species Requirement. Therefore, withdrawal of the Restriction and Election of Species Requirement is respectfully requested.

Applicants submit this application is now in condition for examination on the merits and early notification of such action is earnestly solicited.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 03-2775, under Order No. 12810-00239-US1 from which the undersigned is authorized to draw.

Application No.: 10/577,138

Docket No.: 12810-00239-US1

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Respectfully submitted,

By \_\_\_\_\_

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